

REMARKS

Claims 1-36 were originally filed in the present application.

Claims 37-68 are pending in the present application.

Claims 1-18 are rejected.

Claims 19-35 have been allowed.

Claims 1-36 are cancelled herein without traverse.

Claims 37-68 are added herein.

Claims 37-68 remain in the present application.

Reconsideration of the claims is respectfully requested.

Referring to Section 6 of the September 21, 2005 Office Action, Applicants thank the Examiner for allowing Claims 19-36. Applicants note, however, that at least some of the originally filed independent claims of the present application recited elements that were directed to both a base station and a mobile station. As such, these claims were narrower in scope than the Applicant's true invention actually is. Applicants have thus cancelled Claims 1-36 without traverse and added new Claims 37-68 solely for the purpose of broadening the scope of these claims. Accordingly, favorable reconsideration and allowance of Claims 37-68 is respectfully requested.

In Sections 2 and 3 of the September 21, 2005 Office Action, the Examiner rejected Claims 1-8 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,966,384 to *Felix, et al.* (the "Felix reference"). Applicants respectfully disagree. Applicants have cancelled Claims 1-8 herein

and thus the §102(b) rejection is now moot. Applicants note, however, that the Felix reference fails to disclose all of the elements required by either the cancelled claims or the newly added claims.

For example, the Felix reference teaches transmitting data using a second channel and a second encoding scheme until an interruption in the transmission of data occurs at which point transmission continues on a first channel with a first encoding scheme. Felix reference, column 2, lines 56-60; column 3, lines 7-14; and column 3, lines 17-24. The Felix reference discloses a controller that outputs an indication to stop transmission of data over the second channel when either: (1) all the data has been communicated to the remote unit; (2) an allotted time period has expired; or (3) the transmission has simply been interrupted. *Id.* at column 4, lines 42-58. In the first situation, the Felix reference discloses that the remote unit will perform an acknowledgement of the last frames transmitted and that error control takes place when: (1) Acknowledging (ACK) packets have been received; and/or (2) Negative Acknowledgement (NAK) for messages whose sequence number has not been received even though later numbered messages have been received. *Id.* The Felix reference in Figures 5 and 7 provides limited guidance on how data may be retransmitted in Steps 427 and 527, respectively. Steps 427 and 527 indicate that any *retransmission* of data occurs by transmitting the data at the first transmission rate within the first bandwidth utilizing the first spreading code modulation scheme. *Id.* at Figures 5 and 7; column 8, lines 41-51; and column 9, line 62 – column 10, line 5.

Thus, the Felix reference fails to teach or disclose the limitations of sending at least *one replacement data packet to said mobile station on a second channel at a second higher data rate;*

and a *replacement data packet controller* capable of: receiving said at least one replacement data packet from said base station; and incorporating said at least one replacement data packet into a data packet stream to replace one of: a missing data packet and an error data packet. Such limitations are required by cancelled Claim 1 and newly added independent Claim 36, as well as their respective dependent claims. The above argument also holds true for cancelled independent Claims 5, 9, 16, 19, 23, 27 and 34, newly added independent Claims 42, 49, 54, 61 and 65, and their respective dependent claims. Accordingly, cancelled Claims 1-36 and newly added Claims 36-68 are patentably distinguishable over the art cited and are thus allowable.

In Sections 4 and 5 of the September 21, 2005 Office Action, the Examiner rejected Claims 9-15 and 16-18 under 35 U.S.C. §103(a) as being unpatentable over the Felix reference in view of U.S. Patent No. 6,456,849 to *Purnadi, et al.* (the "Purnadi reference"). Applicants respectfully disagree. Although Applicants have cancelled Claims 9-18 herein and thus the §103(a) rejection is moot, Applicants note that cancelled Claims 9-18 are patentably distinguishable over the Felix reference and in view of the Purnadi reference.

For example, the Felix reference fails to teach or disclose sending at least *one replacement data packet to said mobile station on a second channel at a second higher data rate*; and a *replacement data packet controller* capable of: receiving said at least one replacement data packet from said base station; and incorporating said at least one replacement data packet into a data packet stream to replace one of: a missing data packet and an error data packet, as required by cancelled

independent Claims 9 and 16, newly added independent Claims 36, 42, 49, 54, 61 and 65, and their respective dependent claims.

The Purnadi reference also fails to teach or disclose sending at least *one replacement data packet to said mobile station on a second channel at a second higher data rate*; and a *replacement data packet controller* capable of: receiving said at least one replacement data packet from said base station; and incorporating said at least one replacement data packet into a data packet stream to replace one of: a missing data packet and an error data packet, as required by cancelled independent Claims 9 and 16, newly added independent Claims 36, 42, 49, 54, 61 and 65, and their respective dependent claims.

The Felix reference, either in alone or in combination with the Purnadi reference, thus fails to disclose, teach or suggest sending at least *one replacement data packet to said mobile station on a second channel at a second higher data rate*; and a *replacement data packet controller* capable of: receiving said at least one replacement data packet from said base station; and incorporating said at least one replacement data packet into a data packet stream to replace one of: a missing data packet and an error data packet, as required by cancelled independent Claims 9 and 16, newly added independent Claims 36, 42, 49, 54, 61 and 65, and their respective dependent claims.

Moreover, there is no motivation or suggestion within the Felix reference or the Purnadi reference to prompt one of ordinary skill to selectively and non-inventively combine and then *seek out* still other discrete elements as required by cancelled independent Claims 9 and 16, newly added independent Claims 36, 42, 49, 54, 61 and 65, and their respective dependent claims. Accordingly,

cancelled Claims 9-18 and newly added Claims 36-68 are patentably distinguishable over the art cited and are thus allowable.

SUMMARY

For the reasons given above, the Applicants respectfully request reconsideration and allowance of pending claims and that this Application be passed to issue. If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this Application, the Applicants respectfully invite the Examiner to contact the undersigned at the telephone number indicated below or at *jmockler@davismunck.com*.


The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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